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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/713,636	11/14/2003	Alan Glyn Davies	CM2567C	2430
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27752	7590	06/16/2006
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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/713,636	Applicant(s) DAVIES ET AL.	
	Examiner JYOTHSNA A. VENKAT Ph. D	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-8 and 10-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-8 and 10-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/5/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/5/06 has been entered.

Receipt is acknowledged of IDS filed on 4/5/06. Claim 4 has been canceled as per applicant's amendment dated 4/5/06. Claims 1-3, 5-8 and 10-15 are pending in the application and the status of the application is as follows:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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3. Claims 1-3, 5-8, and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patents 4,559,227 ('227) and 6,143,286('286).

The instant application is claiming hair care composition comprising:

- 1. One or more surfactants*
- 2. A terminal amino functional polysiloxane*
- 3. Additional conditioning agent (claim 8)*

and a hair coloring kit and method of coloring and conditioning hair.

Patent '286 teaches method of coloring as well as conditioning hair using hair coloring and conditioning agents. See examples 1-2 for the surfactants; see col.1, for cationic conditioning agents, and nonionic surfactant. See col.s 6-9 of the patent for the various surfactants; see cols. 2-5 for the various conditioning agents, see col.14 for additional conditioning agents and see col.6 where the patent teaches using the compositions in the form of shampoo using different surfactants, and see examples 4-8 where the patent teaches coloring the hair and conditioning the hair. The difference between the patent and the instant application is the patent does not teach the specific conditioning agent, which is ingredient 2.

Patent '227 teaches conditioning shampoo using surfactant, which is anionic and conditioning agent, which is terminal amino functional polysiloxane (ingredient 2). See the abstract, see col.5, lines 35 et seq for the terminal siloxane polysiloxane wherein z is 1 and y is 0 and q denotes amine function represented by formula at line 60. See also col.6, lines 15-20 for the preferred amine radicals. See col.6, lines 57-60, see col.8, and col.9 for the surfactants, see also col.s 11-12 and claims.

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Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare conditioning compositions of '286 and use the specific conditioning agent of patent '227 into the compositions of '286. One of ordinary skill in the art would be motivated to use the specific conditioning agent with the reasonable expectation of success that the combination of the specific conditioning agent and surfactant provide the advantages of not only conditioning the hair but also that the washed hair retains less water when the shampoo is rinsed out and therefore it is easier and faster to dry. This is a prima facie case of obviousness.

Response to Arguments

Applicant's arguments filed 4/5/06 have been fully considered but they are not persuasive.

Applicant's argue that the claims are not obvious over of the combination of '286 and '227 because the compositions of the present invention, which contain terminal amino functional polysiloxanes having an average polysiloxane chain length from 70 to 150 possess superior and unexpected properties versus compositions which contain graft amino functional polysiloxanes, such as those exemplified in patent '227 and the claims as currently claimed, even possess superior and unexpected results versus compositions which contain terminal amino functional polysiloxane having average polysiloxane chain length below or above applicants range.

In response to the above argument, patent '227 teaches the same terminal functional siloxanes where in y of the patent can be 0-100 and z is 1. See col.5, lines 54-59. See also col.6, lines 43-56 for the preferred siloxane polymers. These polymers disclosed at col.5 are not graft

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polymers. The preferred ranges for $x+y$ of the patent also overlap with the claimed $x+z$ of the instant application.

Applicants point out to data at pages 27-28 of the specification and argue that example 4 in which x is 102 demonstrated superior conditioning efficiency.

In response to the above argument, none of the claims are limited to this example 4.

What is the value of y , R_2 , Z , z , and R in all the examples?


In conclusion, the claims are prima facie obvious over the combination of patents '286 and '227.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JYOTHSNA A VENKAT Ph. D
Primary Examiner
Art Unit 1615
